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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

No. 1294

In the Matter of the Judicial Settlement of Arnold Ramm, as Administrator of the Estate of Sadie Ramm, Deceased, &c.

NORMAN RAMM,

Appellant,

ARNOLD RAMM,

Appellee.

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

JURISDICTIONAL STATEMENT

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NORMAN RAMM,

Appellant,

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Appellee.

ON APPEAL FROM THE COURT OF APPEALS
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JURISDICTIONAL STATEMENT

Appeal from a final order of the Court of Appeals of the State of New York wherein is drawn in question the validity of statutes of the State of New York, as construed and applied, on the ground of their being repugnant to the 14th Amendment, Section 1, of the Constitution of the United States, and said decision of the highest court of the State is in favor of its validity.

Opinions Below

Opinions by the Surrogate's Court were rendered and separately appealed to intermediate higher court. Said opinions are annexed hereto as Appendices C and D, but are not officially reported. No further opinions were had.

The Federal Constitutional questions were raised and decided in each and every court (Folio 386; 27 App. Div. 2d 902, 925). The highest state court reviewed the entire case, only after final decree, memorandum decision reported 22 N. Y. (2) 926 (Appendix B-36-38). Decision of Court of Appeals granting motion amending remittitur showing constitutional question raised and decided, not presently reported, is found attached as Appendix E-42-43.

Jurisdiction

Appellant seeks to have Sections 120, 118 and 94 of the New York Surrogate's Court Act declared constitutionally invalid and certain decrees made pursuant thereto declared null and void for the reason that in this case there was no notice, nor hearing, nor entitlement under said statutes, and they were arbitrarily, discriminatorily and unequally applied as to violate the 14th Amendment to the Constitution of the United States.

The jurisdiction of the Supreme Court to review the decision by direct appeal is conferred by Title 28 U. S. Code, Section 1257(2). The following cases sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case:

Fiske v. *Kansas,* 274 U. S. 380;
Scott v. *McNeal,* 154 U. S. 34;
Mullane v. *Central Hanover Bank and Trust Co.,* 339 U. S. 306;
City of New York v. *New York, New Haven & Hartford Railroad Co.,* 344 U. S. 293;
Armstrong v. *Manzo,* 380 U. S. 545;

McLaughlin v. *Florida*, 379 U. S. 184;
Gulf, Colorado, Santa Fe Ry. Co. v. *Ellis*, 165 U. S. 150.

Statutory Provisions Involved

The Statutes of the State of New York, the validity of which is involved, are Surrogate's Court Act Sections 120, 118 and 94, found in Gilbert-Bliss Civil Practice of New York, Volume 13A, effective September 1, 1967, herein found in Appendix A-29-35. Said statutes are carried over and amended by Surrogate's Court Procedure Act. Sections 1003 and 1004, 1001 and 1002, and 707, found in McKinney's Consolidated Laws of New York, Vol. 58A (Laws of 1966, Chapter 953, effective September 1, 1967).

The date of the judgment of the Court of Appeals sought to be reviewed herein is January 23, 1969, the date of denial of motion for reargument. The final order of the Court of Appeals was made October 10, 1968, and entered in the office of the Clerk of the Surrogate's Court, County of New York, on November 4, 1968, from the affirmance of the denial by the Appellate Division, First Department, which had amended its remittitur stating that the Federal Constitutional questions had been raised by appellant and necessarily passed upon (27 App. Div. (2) 902, 904), Notice of Appeal therefrom having been filed in the Surrogate's Court on June 9, 1967. In the Court of Appeals, a motion to amend the remittitur to include the Federal Constitutional question was granted on February 26, 1969, and said order is shown in Appendix E-42-43.

Questions Presented

Are the provisions of the Surrogate's Court Act of the State of New York, Sections 120, 118 and 94, construed and applied in this case, concerning notice and hearing of the issues involved; a shifting of appellee's burden of proof upon appellant; the denial under said statute of the equal right of administration; the denial of said right under the statute on the ground of failure of communication, an abridgement of freedom of speech; the taking of property from appellant for the benefit of the other property owner; a deprivation of due process of law, a denial of the equal protection of the laws, and a violation of the 14th Amendment to the Constitution of the United States?

Statement of Case

(References are to Folios of Record on Appeal.)

(Abbreviation "SCA" refers to Surrogate's Court Act.)

Appellant is an heir at law and next of kin of decedent and one of two persons equally entitled to her estate.

Decedent died intestate on September 13, 1963. According to New York State law under the Statute of Descent and Distribution (then Decedent's Estate Law, Section 83), said persons became vested[1] with the ownership of the property *from the moment of death.* The right to appointment as administrator under New York law is substantive and a "vested" [2] right also.

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[1] *Read* v. *Williams,* 125 N. Y. 560, 570; *In re Williams,* 162 Misc. 507, 509, 295 N. Y. Supp. 56, at p. 58, affd. 254 App. Div. 741, 4 N. Y. S. (2) 467.

[2] *Matter of Campbell,* 192 N. Y. 312 *et seq.* and at p. 319.

On May 4, 1964, appellee, by his attorney, brought a petition and affidavit (Folios 301-305) in the Surrogate's Court, New York County, for administration of decedent's estate, without notice of its pendency to, nor renunciation of, appellant, made under a special, summary statute SCA 120 in its third paragraph (hereinafter referred to as "SCA 120(3)") and without any averment or reference to said statute (rather he made a reference to SCA 55 (Appendix A-30-31) for substituted service). The attorney stated in his affidavit that appellant would be equally entitled to administration. He had an address for appellant and had addressed a letter to the Veterans Administration at 252 Seventh Ave., New York City, but appellant had not responded. He did not contend anywhere that notice by mail was impracticable. On the basis of that petition and affidavit, the Surrogate's Court made its decree under SCA 120(3) appointing respondent administrator. Appellee's attorney's apparent attempt in his affidavit to proceed by substituted service and mailing under SCA 55 was abortive since the Court decided that there be no notice at all. Appellant contends that the court's powers under SCA 120(3) never had been invoked either in its terms, supporting language in the petition and affidavit, nor in fact.

Appellant had no knowledge of the commencement of any proceeding, nor notice of the pendency of any hearing and under the circumstances could never have made an appearance therein. Said first proceeding terminated in a decree appointing respondent administrator.

Less than three months afterwards, July 24, 1964, said attorney finally came around to introducing himself, and addressing a letter through the same address (Veterans Administration, 252 Seventh Ave., New York City) *this*

time to appellant by name advising of respondent's aforesaid appointment, among other things. (Folio 326).

August 6, 1964, appellant visited said attorney's office and had conversations with him, among other things, concerning the entire lack of notice and the invalidity of the first proceeding; on August 28, 1964, appellant served and filed in the Surrogate's Court a second proceeding, stating his residence, to revoke and vacate the appointment on the ground of lack of notice and non-service of citation, and constructive fraud (invalidity due to breach of a duty to court and appellant under SCA 120(3)), that the whereabouts of appellant were not unknown and were easily ascertainable.

Although no hearing had been had in the first proceeding, a so-called hearing now was had. During the course of testimony appellant directed the court's attention to the fact that respondent had been invalidly appointed and that the former proceedings were void in these words: (Folios 360-361)

> "The Surrogate: You are not the representative of the estate at this point.
>
> "The Witness: The question is as to whether he is the representative of the estate at this point.
>
> "The Surrogate: So far, according to the records there is a presumption he is because there is a decree.
>
> "The Witness: The presumption is overcome when there is an attack.
>
> "The Surrogate: Until I make that decision. So far he is the representative of the estate. You are an attorney, you know that, and until that appointment is vacated he is still the administrator of the estate.
>
> "In so far as the property is concerned, if there is

any concealment that can only be shown when an accounting is filed."

It appears from the above, the Court, however, ignored appellant's contention here that the first proceeding was void, inferred that appellant was barred from participation and that a "concealment" issue could be raised in the accounting proceeding.

There was no judicial hearing of the fundamental issues. Appellant endeavored to prove he was not an absentee, which he would not have had the burden of proving had he been given timely notice of the pendency of the proceeding. The Court however reversed the customary order of proof to the effect that appellant had a burden of communication with appellee and this without notice of the commencement of the proceeding to appellant. Appellant was required to maintain appellee's burden of proof which is not in his first proceeding papers. There was no hearing of the equal right of appointment (already admitted by appellee). Respondent never reached the stand, gave no evidence of qualifications under SCA 118 and sustained no burden of proof. However, his attorney testified to what he had already stated in his affidavit—that he had addressed himself to the Veterans Administration and not to appellant. The alleged hearing was held simply to validate the former void action on the false premise of appellant's absence, although appellant was then physically present in court, and was utilized to confirm the deprivation of appellant's rights under these statutes.

The court decided appellant was disqualified, retrospectively, not only to the date of the appointment of admin-

istrator (May 5, 1964) but also before there was any property or right (Sept. 13, 1963) date of death of decedent. (See Note (1) *supra*, p. 4). (Opinion, Appendix C-40).

By this decision, the aforementioned fiction of the initial proceeding was compounded, essentially that appellant was an absentee.

In the first opinion, the Surrogate said that for nearly 20 years petitioner had no communication with decedent. This is one of several misleading statements in the case. It is a gross exaggeration, and a total irrelevancy under and to the statutes (SCA 120, 94 and 118) and to constitutional rights. It is misleading because four months only were involved. The exaggeration is present because the statutes concern living persons. No rights had accrued under the Statute of Descent and Distribution until the time of death, September 13, 1963 (Note (1), *supra*). On May 4, 1964, without notice, this decree was signed divesting appellant of rights in SCA 118. On July 24, 1964, appellee's attorney notified appellant of the above facts under circumstances hereinbefore alleged. On August 6, 1964, appellant visited appellee's attorney's office and on August 28, 1964, appellant served and filed his proceeding to revoke and motion to vacate. Therefore, the true time involved, from May 4, 1964 to August 28, 1964, is about four months and there is no 20 year period. The decision after appellant's proceeding was an order that confirmed the former decree destroying the equal right, that appellant was excluded from participation in the management.

An appeal was taken to the Appellate Division, First Department, which affirmed without opinion the decision of the lower court, and thereafter a motion for leave to appeal to the Court of Appeals then made was denied.

Later, the final, third proceeding (accounting) was brought by respondent causing a citation to be issued from the Surrogate's Court. That citation was never served upon appellant although its service was required under the enabling statute SCA 120(3). Although at all times appellant was a resident of New York County, and here appellee's attorney knew appellant's residence address, he was not found within the State for that service. No process server delivered process to him. Nevertheless, an affidavit of service was filed stating appellant was "personally" served. These recitals have at all times been denied and there has been no hearing of these issues (SCA 76). (Appellant's affidavit, Folios 388-389).

Appellant thereupon amended his second proceeding by making a motion to dismiss in the Surrogate's Court alleging that the initial proceeding and the final proceeding were void under jurisdictional (according to statutes SCA 42 and SCA 43) and constitutional grounds of deprivation of due process and denial of the equal protection of the laws, that the initial proceeding lacked the appointment res (no judicial hearing, nor proof); on the ground of no jurisdictional facts (SCA 42, 43) (appellant was never an absentee) nor any judicial hearing of his rights thereafter; that the first proceeding and the accounting also lacked *in personam* jurisdiction (no notice although required under SCA 120(3) and SCA 55 statutes (Appendix A-30-31, 35) and under SCA 120(3) of its entirety.

The court denied this motion also (Opinion, Appendix D-41), implying *res judicata* ("same relief previously denied," &c.) that "the action" taken by appellant constituted a "general" appearance, and, by implication, whatever infirmity there was of failure to give notice or serve

same was cured by the former alleged hearing, which gave jurisdiction in the final proceeding. And this, although the conditions precedent and subsequent of the statute SCA 120, third paragraph, had not been observed, the controverted issue (SCA 76) of non-service had not been tried, and the constitutional question drawn in issue bypassed. It ordered that appellant have 10 days in which to prepare answers and objections to the account. There was no service (personal or otherwise) of citation as required in the "subject" clause of SCA 120(3). It is submitted that the fact the accounting decree also stated appellant had been "personally served" does not validate the issue when it was timely and directly controverted by motion and there was no hearing.

The foregoing opinion continues the implicit false assumption of fact, that appellant was missing and an absentee in the first and second proceedings, and the fact that the second proceeding, even under the circumstances of the omission of the judicial hearing of the appointment res, constituted a validation of the first proceeding.

The case of *Scott* v. *McNeal*, 154 U. S. 34, 49-50 (quoted *infra*, at pp. 14-16), is authority for the proposition that since appellant was not a party to the initial proceeding in the Surrogate's Court (terminated by a decree later declared by the same court to be valid), a stranger to the whole thing, nor had any notice of its pendency, there is no principle of *res judicata* involved. And for the further reason that there never was a judicial hearing of the equal right of appointment, and only a denial thereof, there could not have been a seizure of the jurisdictional appointment res so far as this appellant is concerned; that, therefore, he is not bound by either the first or last decrees.

The statutory requirements of SCA 120(3) under which it was mandatory that provision was made in the First Decree, and said Decree required, that citation be served in the judicial settlement of the account, were also ignored. Therefore, provision in the statute and the Court's own directive in its First Decree are superseded by a non-existent retrospective appearance.

It is submitted that the issue here is not one of appearance but one of fact, and in this case, of jurisdictional fact (SCA 42). The initial proceeding petition and affidavit did not invoke the powers of the court under SCA 120(3), and did not set forth that this appellant could be an absentee; and in the second and final proceedings it was established beyond doubt appellant was not an absentee.

The second proceedings to revoke and vacate were hardly a consent (SCA 119(1) and SCA 120) for either forfeiture or confiscation of appellant's rights and property, nor did that proceeding add or amend anything in or to the first proceeding, there being a denial of appellant's petition. Although the fraud issue was not acceptable to the Surrogate therein, the objections there and later made could hardly be considered a waiver of the constitutional rights alleged and decided in every court.

Appellant was not an actor in that proceeding when therein he advised the Court of his claim that the first proceeding was void (SCA 42 and 43).[3] The later objection by way of the motion to dismiss and the fact he never took part in any other manner (i.e. he filed no answer and did not go to try his defenses in the final proceeding), precludes any merger of the first proceeding with the final

[3] *Davidsburgh* v. *Knickerbocker Life Ins. Co.*, 90 N. Y. 526, 529, 530. *Scott* v. *McNeal*, 154 U. S. 34, 49-50.

proceeding. The sole purpose of the motion was to make a direct appeal from every part of the final decree under case law, statutory and constitutional grounds.

The same constitutional questions of due process and equal protection of the laws were reargued in the Appellate Division, First Department. Said court affirmed the denial without opinion. However, upon motion made, the court amended its remittitur stating that the Federal Constitutional question raised by appellant had necessarily been passed upon by said Court, 27 App. Div. 2d 902, 904.

The Questions Are Substantial and Important

1. The constitutionality of these statutes has not been previously passed upon by the Court.

The questions of this case involving New York administration of estates statutes and provisions concerning notice, hearing and equal rights are matters of substance and importance to all heirs at law and next of kin, especially those within the same class of entitlement. SCA 120, 118 and 94 have counterparts in the laws of all fifty states but those laws are variable. All have some form of entitlement provision. As to notice and hearing, in some statutes, there are no apparent requirements.[4] In other states, specific detailed particulars for notice and hearing are required.[5] Too frequently, however, the application and enforcement of express statutory rights are considered merely a favor, that may be arbitrarily denied. Although

[4] Colo. Rev. Stats. Sec. 153-7.1 (1963); Neb. Rev. Stats., Sec. 30-315 (1925); Miss. Code, Sec. 525 (1928); N. J. Stats. Anno., Sec. 3A:6-4 (1932); Tenn. Code Anno. Sec. 30-301 (1932); Vt. Stats. Anno., Sec. 14.903 (1953); Code of Va., Sec. 64.1-118 (1950); Code of W. Va., C. 44, Art. 1, §4 (1923).

[5] Ark. Stats. Secs. 62-2110 and 62-2112 (1949); Mich. Comp. Laws Sec. 701.32 (1956); Minn. Stats. Prob. Code 525.83 (1957); Tex. Stats. Prob. Code 88 (1955); Wisc. Stats. Sec. 324.18 (1947).

the case of *Mullane* v. *Central Hanover Bank & Trust Co.*, 339 U. S. 306, has been a precedent for more than 24 years and repeatedly cited, the practice of omitting notice and hearing as described in the opinion of the New York County Surrogate's Court in 75 N.Y.S.(2) 397 at pps. 403-404, where the *Mullane* case was first decided (reversed in this Court), still continues. Ways are sought to conceal and to avoid the giving of notice of pendency of a proceeding in matters of probate; cases are decided without a hearing or reference to due process of law and the equal rights of next of kin. On information and belief, it is not infrequent that due process rights in these cases are followed only for the breach thereof rather than their observance. Appellant believes that the constitutional rights of notice, hearing and entitlement provisions in probate statutes for heirs at law and next of kin are at least as important as those in cases of beneficiaries under common trust funds.

I.

Deprivation of Due Process of Law.

In the present case, only after the management was seized did respondent's attorney come around to the point of introducing himself, addressing himself to appellant by name, and mail, and making himself known to appellant, to the same post office address which he knew and used before (instead of addressing himself solely to the Veterans Administration). And appellant immediately came into said attorney's office and thereafter filed in the Surrogate's Court the second proceeding to revoke and vacate the first decree. The myth of absence and of non-existence was removed.

Absence was the situation of *Scott* v. *McNeal,* 154 U. S. 34, 46, the estate that of a living person presumed to be dead. It is there said that the presumption of death due to absence is overcome on proof of his being alive, which proof overcomes *prima facie* evidence of death. In the same reasoning also, appellant contends that a presumption of absence is overcome by proof of existence, non-absence or presence and that *prima facie* evidence of absence is similarly overcome (at pp. 49-50). At page 47 of *Scott* v. *McNeal, supra,* the following appears:

> "*The estate of a person supposed to be dead is not seized* or taken into custody of the court of probate upon the filing of a petition for administration, *but only after and under the order granting that petition;* and the adjudication of the court is not upon the question of whether he is living or dead but only upon the questions of whether and to whom letters of administration shall issue. *Mutual Benefit Ins. Co.* v. *Tisdale,* 91 U. S. 238, 243."

And at pages 49 to 50 of the same case:

> "The appointment by the probate court of an administrator of the estate of a living person, without notice to him, being without jurisdiction and wholly void as against him, all acts of the administrator, whether approved by that court or not, are equally void; the receipt of money by the administrator is no discharge of a debt; and a conveyance of property by the administrator passes no title.
>
> "The fact that a person has been absent and not heard from for seven years may create such a presumption of his death as, if not overcome by other proof, is such *prima facie* evidence of his death that the probate court may assume him to be dead and

appoint an administrator of his estate and such administrator may sue upon a debt due to him. But proof, under proper pleadings, even in a collateral suit that he was alive at the time of the appointment of the administrator controls and *overthrows the prima facie evidence* of his death, and establishes that the court had no jurisdiction and the administrator no authority; *and he is not bound,* either by the order appointing the administrator, or by a judgment in any suit brought by the administrator against a third person, *because he was not a party to and had no notice of either.*"

And at pages 50-51, the following:

* * * "This court concurs in the proposition, there announced, 'that it is not competent for a State, by law declaring a judicial determination that a man is dead, made in his absence, and without any notice or process issued against him, conclusive for the purpose of divesting him of his property and vesting it in an administrator, for the benefit of his creditors and next of kin, either absolutely or in favor of those only who innocently deal with such administrator. The immediate and necessary effect of such a law is to deprive him of his property without any process of law whatever, as against him, although it is done by process of law against other people, his next of kin, to whom notice is given. Such a statutory declaration of estoppel by a judgment to which he is neither party nor privy, which has the immediate effect of divesting him of his property is a direct violation of this constitutional guaranty. *Lavin* v. *Emigrant In-*

dustrial Savings Bank, 18 Blatchford 1, 24.'" (above emphasis supplied)

Appellant's non-presence was used as a self-executing device to avoid the due process requirement of giving notice when it was reasonably possible and feasible to do so; and it is held that rather than deprive a citizen of the protection that notice affords that his property is about to be forfeit, due regard should be given to the practicalities and peculiarities of the case. *Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 314, 315, 318, 319. This Court has not hesitated to strike down as violative of due process of law a statute providing for service of notice by publication in circumstances where the person sought to be notified was known to the moving party and could easily have been notified by mail. Nevertheless, the pretense of absence was adopted, and even mailing of notice dispensed with. At page 314 of *Mullane, supra,* it is said:

> • • • "'The fundamental requisite of due process of law is the opportunity to be heard.' *Grannis* v. *Ordean,* 234 U. S. 385, 394. The right to be heard has little reality or worth *unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.*" • • •
>
> "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." • • • (emphasis supplied)

There was no notice here. In the final proceeding, statutory notice was required and none given. Appellant could not choose to appear or not in the first proceeding nor to default therein and that proceeding resulted in a decree. There was no acquiescence at any time (required by SCA 120 and 119). There has never been a waiver of the jurisdictional requirements of SCA 120 as a whole, or in its third paragraph (SCA 120(3)), by appearance or otherwise. There has been no opportunity to contest under, nor any hearing of SCA 118 (the Surrogate did not consider it) (see quotation at pp. 6-7 *supra*), or the matter of equal right. Respondent never maintained any burden of proof, *Armstrong* v. *Manzo,* 380 U. S. 545, 548-52; *Speiser* v. *Randall,* 357 U. S. 513, 525, and this appellant was denied the right without a hearing of the issue. Had appellee been required to maintain his burden of proof, he would have had to show his qualifications under SCA 118, that his management of this estate of personalty (which was without debts, expenses, commissions and attorney's fees) would be more efficient than appellant's. The opportunity to appear and be heard on a return date to protect against property deprivations is an exceedingly important and substantial right and should not be converted into a burden of negating self-evident matters, such as physical presence, nor of disproving matters which appellee had to prove in the first place. *Armstrong* v. *Manzo, supra.*

The doctrines set forth in *Mullane* were shortly thereafter reinforced by this Court in *City of New York* v. *New York, New Haven & Hartford R. Co.,* 344 U. S. 293, where it was held that service by publication upon the City of New York was invalid even in a clearly *in rem* proceeding. It is said at pp. 296-297:

"Notice by publication is a poor and sometimes hopeless substitute for actual service of notice. Its justification is difficult at best. * * * But when names, interests and addresses of persons are unknown, plain necessity may cause a resort to publication. * * * The case here is different. No such excuse existed to justify subjecting New York's claims to the hazard of forfeiture arising from 'constructive notice' by newspaper. * * * There was even more reason to mail notice to the non-appearing known creditor New York City than to the creditors who had actually filed appearances as claimants.

"Nor can the bar order against New York be sustained because of the city's knowledge that reorganization of the railroad was taking place in the court. The argument is that such knowledge puts a duty on creditors to inquire for themselves about possible court orders limiting the time for filing claims. But even creditors who have knowledge of a reorganization have a right to assume that the statutory 'reasonable notice' will be given them before their claims are forever barred. When the judge ordered notice by mail to be given the appearing creditors, New York City acted reasonably in waiting to receive the same treatment.

"The statutory command for notice embodies a basic principle of justice—that a reasonable opportunity to be heard must precede judicial denial of a party's claimed rights. New York City has not been accorded that kind of notice."

There was no direct bar in the Surrogate's Court Act to waiting until a proceeding had been commenced. Even

with knowledge of decedent's death, under these statutes, appellant had every right to believe he would be given notice of the pendency of a proceeding and would not be barred from participating. The estate was then under the protection of the New York State Supreme Court as an incompetent's estate and no jeopardy other than what had been. To hold that receipt of irrelevant communications (legal papers in the incompetent's estate in appellee's name only, without any attorney's name) or papers without a return date of time, place and purpose of a proceeding, hearing or attorney's name thereon, and under circumstances where appellant was not communicated with for consultation and participation, constitutes notice of a special proceeding, apart from definite statutes, is as obvious a denial of due process as can be imagined.

With knowledge of appellant's rights and having a mailing address, appellee chose instead the simple expedient of not giving said notice by mail and concealed from the court the fact that appellant's whereabouts could be ascertained.

To allow the appellee to proceed *ex parte* without any notice at all where it could give notice by mail is to permit a fiction to replace truth, and darkness, the light.

In *McDonald* v. *Mabee*, 243 U. S. 90, 91, Justice Holmes said the following:

> "Great caution should be used not to let fiction deny the fair play that can be secured only by a pretty close adhesion to fact."

And in *Hyde and Schneider* v. *U. S.*, 225 U. S. 347, 390, he said:

> "The constitution is not to be satisfied with a fiction."

How much trouble could have been avoided when appellee had only to mail the notice of pendency of the proceeding or hearing to the address he already knew. And when his attorney finally did address appellant by name and appellant immediately came into said attorney's office, the rights had been jeopardized.

The decision of the state court is not harmonious with precedents in this Court. The conclusions of the Surrogate's Court that the initial proceeding was in all respects *res judicata* and valid is contrary to *Scott* v. *McNeal, supra;* that the mails could not be used, contrary to *Mullane* v. *Central Hanover Bank, supra,* and SCA 55; that the said initial appointment was a bar to a judicial hearing on the equal right of appointment, contrary to *City of New York* v. *New York, New Haven and Hartford Railroad Company, supra,* at p. 297; that the appearance objecting to the foregoing and lack of hearing of the issues of equal rights, wherein appellant was given the burden of negating matters which appellee had the burden of proving and wherein he sustained no proof; and also where the denial herein was due to "failure of communication," there was an abridgement of freedom of speech violating the First Amendment, both are contrary to *Speiser* v. *Randall, supra* at pages 518-520; and where the court inferred "that whatever constitutional infirmity resulted from the failure to give notice was cured by the hearing subsequently afforded him upon his motion to set aside the decree," contrary to *Armstrong* v. *Manzo, supra* at p. 551. Further, the illegal taking of rights and property from A and giving same to B, contrary to *Myles Salt Co.* v. *Iberia Drainage Dist.,* 239 U. S. 479, 484; and to *Ochoa* v. *Hernandez y Morales,* 230 U. S. 139 at p. 161; that the

decision of the court was an arbitrary selection, an unusual, invidious discrimination, retrospecting on the basis of antecedent and irrelevant matters outside of stated statutory goals, contrary to *McLaughlin* v. *Florida,* 379 U. S. 184, and the cases cited at pages 190-191; the singling out of appellant for special treatment and a penalty, contrary to *Gulf, Colorado & Santa Fe Ry.* v. *Ellis,* 165 U. S. 150.

Heretofore, under New York law, there has been no like disqualification. In fact the denial of this appellant's rights in the second proceeding was a penalty, retrospectively imposed before the property rights accrued and as such is a disqualification which, it is suggested, violates due process of law. Disqualification in New York is an exclusive function expressly limited by legislative policy and classification under SCA 118 and SCA 94, and has been strictly construed by New York State courts. Up to now, if there were to be other disqualification grounds, it had to have been clearly stated by the Legislature, and the Legislature has not done so here. Failure of communication has never been a ground for ineligibility. The term is vague and indefinite and has a number of meanings. The courts have said that unless a case can be brought exclusively within the letter and spirit of the statute (SCA 94), the Surrogate has no discretion to refuse letters. *Leland's Will,* 219 N. Y. 387, 393; *Matter of Foss,* 282 App. Div. 509, 125 N. Y. S. 2d 105, 107; *Matter of Latham,* 145 App. Div. 849, 854, 130 N. Y. S. 535, 539; see also *Matter of Eggsware,* 123 Misc. 541, 551-2, 206 N. Y. S. 18, 24 at pp. 27-28 (the equal right, persons being in the same class, is modified by SCA 94, and conflict of interest is no ground for disqualification because said ground does

not exist in SCA 94 statute). Query, is a person in the same class with equal right different from any other person (SCA 94)?

Heretofore, with regard to persons of the same class, under SCA 118, to wit, in *Matter of Nocera,* 10 Misc. 2d 494, 172 N. Y. S. 2d 171; *Matter of DeHart,* 8 Misc. 2d 531; 166 N. Y. S. 2d 466; and *Matter of Eggsware, supra,* their equal rights were *decided by a vote* of a majority within the entitled class; and in *Nocera, supra,* and *DeHart, supra,* on the additional ground of who will best manage the estate. The parties there were in court at the first instance and there was a hearing initially of the SCA 118 issue. These, aforesaid, are the matters of proof not heard in these proceedings.

The denial was a judicially declared forfeiture and confiscation of preexisting rights and was intended as a bar to the equal right to appointment under the statute. The divesting of title, a taking from A and giving same to B, made with a view of imposing a penalty upon appellant, and solely to grant a special benefit to the other property owner was without any benefit whatever to appellant. It is submitted, therefore, that the denial was not in the exercise of a legislative legal discretion but was a deprivation of property without due process of law in violation of the 14th Amendment to the Constitution of the United States.

The discrimination here is unusual, a special singling out, which has been the subject of much analysis and discussion by the Court, and contended here to be violative of said 14th Amendment as denying the equal protection of the laws.

II.

Denial of Equal Protection of the Laws.

The Equal Protection of the Laws provisions of the United States Constitution applies to all state powers which can affect an individual or his property. *Louisville Gas* v. *Coleman,* 277 U. S. 32, at pages 37-39; *Shelley* v. *Kraemer,* 334 U. S. 1, at pp. 14-18. The determinations of the New York State courts, being arbitrary, unequal and discriminatory, deny that right.

The Surrogate created a new and unusual difference for the denial of the right to manage. He did not consider the existing statutory standard for the difference, nor differences consonant with the rights of the parties, nor best manager in terms of economy and preservation of fiscal interests. He erroneously denied that there could be a joint administration, a frequent occurrence under wills and statutory administrations. Under the equal right given under state law (SCA 118) appellant was entitled to equal management. This determination provides for an uneven result without any applicable statutory classification. It discriminates and denies participation of one as against the other in that it favors the one who is swiftest to get to the Surrogate. The result is an undue favor and individual privilege on the one hand and hostile discrimination and the oppression of inequality on the other. Appellant is not treated alike with other persons under the same conditions and circumstances. A special rule is selected for enforcement and a special burden is imposed from which others in the same class are exempt. It is invidious in that it creates a new differ-

ence or standard of an unusual character for eligibility as to one person (not granted by the Legislative discretion or policy) and seeks to apply it to one person and not to any other person. The conduct for which appellant is faulted, of itself, is a denial of the First Amendment Constitutional right of freedom of speech. The selective enforcement is designed to discriminate against one person without any intention to follow it up by general application against other persons. The ruling penalizes conduct on a consideration based on matters other than statutory policy, which is economy and efficiency of management ((SCA 118) and cases cited at page 24 *supra;* cf., *Hartford* v. *Harrison;* 301 U. S. 459, 461-63), and treats a co-equal differently than all other persons not set forth in SCA 94. It is an irrelevance to statutory policy made purely on the basis of personal power. The peculiar facts of discrimination reflect no policy but simply an arbitrary and capricious action. The disqualification applies only to appellant and discriminatorily denies the right. The State may not casually deny the right because of some remote administrative benefit to the State. *Harper* v. *Virginia Board,* 383 U. S. 663, 665-668, *Rinaldi* v. *Yeager,* 384 U. S. 305, 309-311. Appellant submits that the above statutes as applied results in a casual deprivation of the right of equal participation and it is clear that the state courts' interpretation fails to stand the test of reasonableness and rationality when the State purports to establish the legislative classification.

The regulation, on its face, is not in the public interest, attempts to create an economic advantage to another person at a date arbitrarily set and has no relationship to the public welfare. It conjures up a special situation to justify the discrimination.

In *Southern R. Co.* v. *Greene,* 216 U. S. 400, at p. 412, it is said:

> "The equal protection of the laws means subjection to equal laws applying alike to all in the same situation. If the plaintiff is a person within the jurisdiction of the State of Alabama, within the meaning of the Fourteenth Amendment, it is entitled to stand before the law upon equal terms, to enjoy the same rights as belong to, and to bear the same burdens as are imposed upon, other persons in a like situation * * * (citing *Pembina* v. *Penna.,* 125 U. S. 181, 31 L. ed. 600) * * * 'The inhibition of the Amendment that no state shall deprive any person within its jurisdiction of the equal protection of the laws was designed to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.'"

It is sought arbitrarily to establish an unreal distinction or difference without a basis in substance for the SCA 94 and 118 statutes, *McLaughlin* v. *Florida, supra,* in order to make an irrational discrimination. *Harper* v. *Virginia, supra,* at pp. 669-70. And "failure of communication" as a ground for ineligibility is irrelevant, irrational and discriminatory since such difference has no causal connection to the statutory purpose. *Rinaldi* v. *Yeager,* 384 U. S. 305, at pp. 309-11; is an arbitrary and prejudicial discrimination, *Concordia Fire Insurance Co.* v. *Illinois,* 292 U. S. 535, 545; and a purely personal and arbitrary singling out of a person for hostile and discriminatory legislation.

That the action of the court under the statutes is unequal, clearly, when it singles out one individual of the

class for special treatment is set forth in *Gulf, Colorado, Santa Fe Railroad Co.* v. *Ellis,* 165 U. S. 150, where it is said at page 159:

> "* * * Unless the legislature may arbitrarily select one corporation or one class of corporations, one individual or one class of individuals and visit a penalty upon them which is not imposed upon others guilty of a like delinquency, this statute cannot be sustained.
>
> "But arbitrary selection can never be justified by calling it classification. The equal protection demanded by the Fourteenth Amendment forbids this. No language is more worthy of frequent and thoughtful consideration than those words of Mr. Justice Matthews speaking for this court in *Yick Wo* v. *Hopkins,* 118 U. S. 356, 369. 'When we consider the nature and theory of our institutions of government, the principles upon which they are supposed to rest, and review the history of their development, we are constrained to conclude that they do not mean to leave room for the play and action of purely personal and arbitrary power.'"

CONCLUSION

It is respectfully submitted that whether the Court below in interpreting the 14th Amendment can make assumptions where neither notice nor a judicial hearing of the issues of equal right were had in a manner provided by neither the statute, nor court construction of the same, that the equal right may be barred and denied for the further reason of failure of communication, provides constitutional validity to the statute, raises a substantial federal question as to require plenary consideration with briefs on the merits and oral argument for their resolution.

WHEREFORE, it is respectfully urged that probable jurisdiction be noted and that the judgment below be reversed.

Respectfully submitted,

NORMAN RAMM,
Attorney for Appellant

APPENDICES

APPENDIX A

Surrogate's Court Act

§ 42. Jurisdiction of subject matter; objection to defect in record.

The Surrogate's Court obtains jurisdiction in every case to make a decree or other determination by the existence of the jurisdictional facts prescribed by statute. When the decree or other determination fails to recite the existence or proof of a jurisdictional fact, and such fact actually existed; or when any party has failed to take any intermediate proceeding required by law to be taken, an objection to such decree or determination based thereon is available only upon appeal, and the Surrogate's Court may, in its discretion, allow such a defect to be supplied by amendment.

§ 43. Presumption of jurisdiction.

Where the jurisdiction of a Surrogate's Court to make a decree or other determination is drawn in question collaterally, the jurisdiction is presumptively, and, in the absence of fraud or collusion, conclusively, established, by an allegation of the jurisdictional facts, contained in a written petition or answer, duly verified, used in the Surrogate's Court. The fact that jurisdiction of the parties was obtained is presumptively proved, by a recital to that effect in the decree.

§ 55. Citation: how served within state.

Personal service of a citation within the state shall be made as follows:

Upon an adult person, by delivering a copy thereof to the person to be served.

* * * * *

Where it appears, by affidavit, to the satisfaction of the surrogate from whose court a citation is issued, that proper and diligent effort has been made to serve it as hereinbefore prescribed in this section upon a resident of the state whose place of residence or place of business is known, and that the person to be served cannot be found at his residence or place of business, and cannot be elsewhere served within the state within a reasonable time, or, if found, that he evades service, so that it cannot be made; the surrogate may make an order directing that service thereof be made, by leaving a copy thereof, and of the order, if the respondent is a domestic corporation or joint stock or other unincorporated association at its principal office or place of business, or if a natural person at the residence of the respondent with a person of proper age, if upon reasonable application, admittance can be obtained, and such person found who will receive it; or, if admittance cannot be so obtained, nor such a person found, by affixing the same to the outer or other door of the respondent's said place of business or office, or of his residence, and by depositing in a postoffice another copy thereof, properly enclosed in a postpaid wrapper, addressed to respondent at its said principal office or place of business, or to him at his place of residence, or upon proof being made by affidavit that no such residence

can be found, service of the citation may be made in such manner as the court may direct; the order, and the papers upon which it was granted, must be filed, and the service must be made, within ten days after the order is granted; otherwise the order becomes inoperative. On filing an affidavit showing service according to the order, the citation is deemed served, and the same proceedings may be taken thereupon, as if it had been served by publication, pursuant to order for that purpose.

Where it is necessary in any special proceeding to cite known creditors, and it appears that the number of creditors or persons claiming to be creditors, upon whom citation is required to be served, exceeds twenty-five, service thereof may be made upon them by publication thereof in such newspaper or newspapers and for such a length of time as shall be fixed by the surrogate, and by the mailing of a copy of such citation to each of them by deposit of a copy thereof in the post-office, properly enclosed in a postpaid sealed wrapper addressed to each of them at his last known post-office address as stated in the order, at least twenty days prior to the return day thereof.

§ 76. Uncontroverted allegations constitute due proof.

Except as otherwise provided by law, a petition, affidavit or account filed in a special proceeding shall be due proof of the facts therein stated, unless controverted by answer, objection or other proof.

§ 94. Persons incompetent to receive letters, or act as testamentary trustee.

No person is competent to serve as an executor, administrator, testamentary trustee or guardian, who is:

1. Under the age of twenty-one years;

2. An adjudged incompetent;

3. An alien not an inhabitant of this state;

4. A felon;

5. Incompetent to execute the duties of such trust by reason of drunkenness, dishonesty, improvidence or want of understanding.

Except as prescribed in section ninety-seven, an executor, testamentary guardian or testamentary trustee, who is not by law required to give a bond, shall not qualify or serve as such where, after objection filed and proof taken, the surrogate finds that:

1. His circumstances are such that they do not afford adequate security to the creditors, or persons interested in the estate or fund for the due administration thereof.

2. He is not a resident of the state of New York.

§ 118. Who entitled to letters of administration.

Administration in case of intestacy must be granted to the persons entitled to take or share in the personal property, who are competent and will accept the same, in the following order:

1. To the surviving husband or wife.

2. To the children.

3. To the grandchildren.

4. To the father or mother.

5. To the brothers or sisters.

6. To any other next of kin entitled to share in the distribution of the estate, preference being given to the person entitled to take the largest share in the estate, except as hereinafter provided.

* * * * *

If no person entitled to take or share in the estate will accept the same or an appointment is not made by consent as hereinafter provided, then administration shall be granted as follows:

a. To the public administrator.

b. To the county treasurer of the county, or to the petitioner, in the discretion of the surrogate.

c. To any other person or persons.

If several persons have an equal right to administration, there shall be no preference on account of sex, but that person must be appointed, who will, in the judgment of the surrogate, best manage the estate of the intestate. Relatives of the whole blood must be preferred to those of the half blood. If there are several persons equally entitled to administration, the surrogate may grant letters to one or more of such persons. Administration may be granted to one or more competent persons, jointly with a person entitled upon the application of a person entitled to take or share in the personal property, or to a competent person or persons not entitled, upon the consent of all the persons entitled to take or share in the estate whether within or without this state and competent, which consent must be in writing, and filed in the office of the

surrogate. For the purposes of this section a trust company or other corporation authorized to act as administrator shall be included in the word "person."

§ 120. Citation; proceedings upon return thereof.

Every person, being a resident of the state and competent, who has a right to administration prior or equal to that of the petitioner and who has not renounced must be cited upon a petition for letters of administration, and where the petitioner is not entitled to share in the distribution of the estate there must also be cited all resident infants and adjudged incompetents who are so entitled, provided however that if the petitioner is the public administrator or county treasurer he shall be required to cite only resident infants and adjudged incompetents entitled to share in the estate whose name and address are known to him. The surrogate may, in his discretion, issue a citation to non-residents, or those who have renounced, or to any and all other persons interested in the estate. Where it is not necessary to cite any person, a decree granting letters may be made on presentation of the petition. Any person who has a right to administration prior or equal to that of the petitioner, may renounce his right by a written instrument, acknowledged, or proved, and duly certified which must be filed in the surrogate's office, except that a public administrator or county treasurer may not renounce his right and may only be excused from acting as such upon his motion duly made and upon an order made and entered thereupon by the surrogate.

* * * * *

The surrogate, in his discretion, may dispense with service of citation upon a person who has a right to administration equal to that of the petitioner where it appears that the whereabouts of such person are unknown and cannot be ascertained after diligent inquiry, subject to the requirement that the decree granting the letters shall contain a provison directing that in the proceeding for the judicial settlement of the account of the administrator, citation shall issue and be served upon such person.

APPENDIX B

Memoranda

22 New York Reports, 2d Series, Page 926.
2d Series, Page 926.

COURT OF APPEALS

In the Matter of the Estate of Sadie Ramm, Deceased. Arnold Ramm, as Administrator of the Estate of Sadie Ramm, Deceased, Respondent, Norman Ramm, Appellant.

Argued September 26, 1968, decided October 10, 1968.

Executors and administrators—account—letters of administration—upon appeal from decree judicially settling account of petitioner, decedent's son, as administrator of her estate, contentions by appellant, another son, served personally in accounting proceeding, that Surrogate's Court, which, upon affidavit by petitioner's attorney as to inability to communicate with appellant, had dispensed with service of citation upon him in proceeding for letters of administration, denied subsequent application by him to revoke letters of administration, and thereafter denied motion by him to dismiss for lack of jurisdiction, petition for letters of administration and petition in accounting proceeding, had never acquired jurisdiction of his person or proceedings, and that it had transcended its statutory and constitutional powers and deprived him of due process and of equal protection of the law—decree was properly affirmed.

Matter of Ramm, 27 A D 2d 902, 925, affirmed.

Appeal, on constitutional grounds, from an amended

order of the Appellate Division of the Supreme Court in the First Judicial Department, entered April 25, 1967, which unanimously affirmed a decree of the New York County Surrogate's Court (Joseph A. Cox, S.) judicially settling the account of petitioner Arnold Ramm, as administrator of the estate of his mother, Sadie Ramm, deceased. After petitioner had filed his petition for letters of administration, his attorney submitted an affidavit to the Surrogate's Court, wherein he stated that, in addition to petitioner, decedent had been survived by another son, appellant Norman Ramm, who would be equally entitled to take letters of administration; that the only address which deponent had for appellant was in care of the Veterans Administration; that he had sent a waiver of citation to appellant in care of the Veterans Administration; that, when it was not returned, he called that agency and spoke to a lawyer who told him that they forwarded appellant's mail to him and would not give out his address, and that deponent knew of no other way to obtain the address. The Surrogate thereupon dispensed with service of citation upon appellant, pursuant to section 120 of the Surrogate's Court Act, and issued the letters of administration to petitioner. Appellant thereafter commenced a proceeding to revoke the letters and, after a hearing, his application was denied, the Surrogate finding that the affidavit submitted by petitioner's attorney was sufficient to justify the court's dispensing with service of citation upon appellant; that, although appellant had received communications through the Veterans Administration, he had made no effort to contact his family or his attorney, and that there was no basis in the record for revoking the letters issued to petitioner (see 24 A D 2d 558, mot. for lv. to app. den. 16 N Y 2d 487). After the pres-

ent accounting proceeding was commenced and appellant was, as alleged by petitioner, served personally therein, he moved to dismiss the petition for letters of administration and the petition in the accounting proceedings, alleging that the court lacked jurisdiction over the proceedings, over the subject matter and over his person. The Surrogate consolidated the proceeding instituted by this motion with the accounting proceeding and denied the motion, finding that it was another effort to obtain the relief which had previously been denied; that appellant's action constituted a general appearance in the accounting proceeding, and that he should have a specified period of time within which to file objections to the account. Appellant did not file any objections to the account. In the Court of Appeals appellant argued that the Surrogate's Court had never acquired jurisdiction of his person or the proceedings and that it had transcended its statutory and constitutional powers and deprived him of due process and of equal protection of the law.

Norman Ramm, appellant in person.
Philip A. Greco for respondent.

Concur: Chief Judge Fuld and Judges Burke, Scileppi, Bergan, Keating, Breitel and Jasen.
Order affirmed, without costs; no opinion.

Memorandum Opinion

April, 1967, 27 App. Div. 2d 925.

NEW YORK SUPREME COURT

APPELLATE DIVISION—FIRST DEPARTMENT

(April 25, 1967)

2 In the Matter of the Estate of Sadie Ramm, Deceased—Motion to amend the order of this court entered on March 9, 1967 [27 A D 2d 902] is granted so as to include the statement that the court in affirming the decree appealed from necessarily passed upon questions raised pursuant to the Federal and New York State Constitutions. The order of this court entered on April 11, 1967 is vacated. Concur—Eager, J.P., Steuer, Capozzoli, Tilzer and Staley, Jr., JJ.

APPENDIX C

Opinion, Proceeding to Revoke and Vacate

SURROGATE'S COURT

NEW YORK COUNTY

Filed December 8, 1964

Estate of Sadie Ramm

The application for revocation of letters is denied. For nearly twenty years the petitioner had no communication with the decedent and only a casual contact with his brother. For one engaged in practice and in business, he took unusual steps to preserve his privacy. He received communications through the Veterans' Administration, but made no effort to get in touch with his family or the attorney. The affidavit upon which this court dispensed with service of citation to petitioner was sufficient to justify that action (Surr. Ct. Act §120), and nothing in the present record justifies setting aside that decree or revoking the letters issued to respondent.

Submit decree on notice accordingly.

S. S. D. F.

APPENDIX D

Opinion, Motion to Dismiss on Jurisdictional and Constitutional Grounds

SURROGATE'S COURT

NEW YORK COUNTY

Opinion, Motion to Dismiss on Jurisdictional and Constitutional Grounds
Filed August 10, 1966

Estate of Sadie Ramm

The motion to dismiss the petition for letters of administration and to dismiss the petition in this accounting proceeding is denied.

The movant heretofore instituted a proceeding to revoke letters of administration and after hearing this application was denied (N. Y. Law Journal December 8, 1964). A subsequent motion for reargument was granted and the original decision was adhered to (N. Y. Law Journal January 8, 1965). This determination was affirmed by the Appellate Division (24 A D 2d 558) and a motion in the Court of Appeals for leave to appeal was denied (16 N Y 2d 487).

The instant motion is another effort to obtain the relief which previously was denied by this court and the appellate courts. Inasmuch as the action taken by the movant constitutes a general appearance in this accounting proceeding (Montgomery v. East Ridgelawn Cemetery, 182 Mis. 562, affd. 268 App. Div. 857; Heos v. Ladner, 279 App. Div. 1095; Matter of Feinberg, 185 Misc. 862; Kanner v. State of New York, 206 Misc. 544; Kassover v. Morgan, 178 N. Y. S. 2d 244), the movant will be allowed ten days from the date of the order on this motion to file objections to the account.

Submit order on notice.

J A C (signed)

APPENDIX E

Order Amending Remittitur

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at the Court of Appeals Hall in the City of Albany on the Twenty-sixth day of February A. D. 1969.

Present, Hon. Stanley H. Fuld, Chief Judge, presiding.

Mo. No. 298

In the Matter of
the Judicial Settlement of
Arnold Ramm, as Administrator of
the Estate of Sadie Ramm, Deceased, &c.

Norman Ramm,

Appellant,

Arnold Ramm,

Respondent.

A motion to amend the remittitur in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is granted, the return of the remittitur requested and, when returned, it will be amended by adding thereto the following:

> Upon the appeal herein there were presented and necessarily passed upon questions under the Constitution of the United States, viz.: Appellant argued that Sections 120, 118 and 94 of the Surrogate's Court Act were constitutionally invalid in their application in this case, and such application of and construction of said statutes were violative, or repugnant to, the provisions of the fourteenth amendment of the Constitution which provide that no state shall deprive any person of property without due process of law and that all persons shall be accorded the equal protection of the laws. The Court of Appeals considered these contentions and held that there was no violation of petitioner's constitutional rights.

AND the Surrogate's Court of New York County hereby is requested to direct its clerk to return said remittitur to this Court for amendment accordingly.

A copy

GEARON KIMBALL (signed)
Deputy Clerk

(SEAL)

Order Denying Motion for Reargument

STATE OF NEW YORK

IN COURT OF APPEALS

At a Court of Appeals for the State of New York, held at the Court of Appeals Hall in the City of Albany on the Twenty-third day of January A. D. 1969.

Present, Hon. Stanley H. Fuld, Chief Judge, presiding.

Mo. No. 298

In the Matter of
the Judicial Settlement of
Arnold Ramm, as Administrator of
the Estate of Sadie Ramm, Deceased, &c.

Norman Ramm,

Appellant,

Arnold Ramm,

Respondent.

A motion for reargument of the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

(SEAL)

A copy

Gearon Kimball
Deputy Clerk

Order Affirming Appellate Division Order

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COURT OF APPEALS

State of New York, ss.:

PLEAS in the Court of Appeals, held at the Court of Appeals Hall, in the City of Albany, on the 10th day of October, in the year of our Lord one thousand nine hundred and sixty-eight, before the Judges of said Court.

WITNESS,

The HON. STANLEY H. FULD,
Chief Judge, Presiding.

RAYMOND J. CANNON, Clerk.

Remittitur October 10, 1968

1. No. 223 68

In the Matter of
Arnold Ramm, as Administrator of
the Judicial Settlement of
the Estate of Sadie Ramm, Deceased, &c.

Norman Ramm,

Appellant,

Arnold Ramm,

Respondent.

BE IT REMEMBERED, That on the 27th day of April in the year of our Lord one thousand nine hundred and sixty-

eight, Norman Ramm, the appellant—in this cause, came here unto the Court of Appeals, pro se, and filed in the said Court a Notice of Appeal and return thereto from the orders of the Appellate Division of the Supreme Court in and for the First Judicial Department.

And Arnold Ramm, the respondent—in said cause, afterwards appeared in said Court of Appeals by Philip A. Greco, his attorney.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

WHEREUPON, The said Court of Appeals having heard this cause argued by Mr. Norman Ramm, pro se, for the appellant, submitted by the respondent, and after due deliberation had thereon, did order and adjudge that the orders of the Appellate Division of the Supreme Court appealed from herein be and the same are affirmed, without costs.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the Surrogates' Court, New York County, there to be proceeded upon according to law.

THEREFORE, it considered that the said orders be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by said Court of Appeals remitted into the Surrogates' Court, New York County, before the Surrogates thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now re-

mains in said Surrogates' Court, before the Surrogates thereof, &c.

RAYMOND J. CANNON (signed)
Clerk of the Court of Appeals of the
State of New York

Court of Appeals, Clerk's Office
Albany, October 10, 1968.

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

(SEAL)

RAYMOND J. CANNON (signed)
Clerk